

**DECISION**



25306  
**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

**FILE:** B-210321

**DATE:** June 1, 1982

**MATTER OF:** Introl Corporation

**DIGEST:**

1. Question of whether contract should be terminated for default and whether defaulted contractor should be held liable for excess reprocurement cost is a matter within the jurisdiction of the Armed Services Board of Contract Appeals under the disputes clause of the contract and is not for consideration by GAO.
2. Contracting officer acted reasonably in negotiating a reprocurement contract on a sole-source basis with only other bidder on the original procurement at minimal price increase over original bid where the defaulting contractor delivered nonconforming products, failed to meet original and extended delivery dates, and was uncertain as to timetable for proposed corrective action prior to default.

Introl Corporation (Introl) protests the sole-source reprocurement and award of contract No. N60530-83-C-0014, by the Naval Weapons Center (NWC), Department of the Navy (Navy), to Teledyne Inet for two motor-driven converters, after the Navy terminated Introl's contract for default. Introl contends that its prior contract with the Navy should not have been terminated for default, that it should not be held liable for the excess cost of reprocurement, and that the reprocurement was improperly negotiated on a sole-source basis.

For the reasons stated below, the protest is dismissed in part and denied in part.

The Navy originally awarded Introl a \$77,118 contract for the converters pursuant to an invitation for bids under which Teledyne Inet submitted the only

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other bid at \$77,526. After Introl failed to meet the required 180-day delivery date, May 3, 1982, the Navy and Introl agreed to an extended delivery date of June 24, 1982.

Introl did not deliver the converters until June 28, 1982, and the converters were 94 inches high, 22 inches higher than called for in the specifications. Following a show cause letter and a meeting with Navy personnel, on August 2, 1982, Introl proposed two options to complete performance. On August 30, 1982, the Navy rejected Introl's options and terminated the contract with Introl for default due to the failure of Introl to deliver conforming converters.

Since only two bids were initially received, the Navy decided to negotiate with the only other bidder, Teledyne Inet, pursuant to Defense Acquisition Regulation (DAR) § 8-602.6(b) (1976 ed.), which provides that repurchases against a defaulting contractor's account for the same supplies do not have to be formally advertised. The Navy and Teledyne Inet negotiated a contract for \$81,898, an increase of \$4,372 over Teledyne Inet's original bid, with a delivery date of April 4, 1983.

Introl appealed the termination for default to the Armed Services Board of Contract Appeals (ASBCA) before protesting the reprocurement contract to this Office.

We will not consider Introl's arguments concerning the propriety of the default termination and its liability for the excess cost of reprocurement. The question of whether a contract should be terminated for default and whether the defaulted contractor should be held liable for the excess cost of reprocurement is a matter within the jurisdiction of the ASBCA under the disputes clause of Introl's contract and is not for consideration by our Office. McQuiston Associates--Reconsideration, B-199013.2, October 29, 1981, 81-2 CPD 365; Rogow & Bernstein, B-197269, June 11, 1980, 80-1 CPD 406.

Introl objects to the sole-source reprocurement because it and other companies allegedly produce the required converters. Introl points out that its August 2, 1982, letter had assured the Navy of corrective action before the April 4, 1983, delivery date of the reprocurement

contract. Introl also argues that it has shown its capability of producing the required equipment in spite of the error of physical dimension, has proven its willingness to work with the contracting officer and using activity to correct the error, has produced similar equipment for Government agencies including NWC, and has established an excellent reputation of meeting its commitments to Government and private concerns. Introl further contends that Teledyne Inet has a poor record of delivery of contract requirements and has had numerous contracts canceled due to poor performance.

Initially, we note that we assume the award to Teledyne Inet was preceded by an affirmative determination of responsibility, a matter which we do not review when contentions such as Introl's are made. See Domar Industries, B-209861, December 30, 1982, 82-2 CPD 589.

The Navy asserts that it could not reasonably expect Introl to perform timely and include Introl in the reprourement. Introl had failed to meet either the original or the mutually agreed-upon extended delivery date. Further, Introl's delivered product deviated materially from the specifications. Also, Introl had orally proposed delivery of corrected converters at the predefault meeting in 14 to 16 weeks and then extended that corrective period in the August 2, 1982, letter to an 18- to 20-week delivery period. As for other sources, the Navy contends that it reasonably knew of and turned to Teledyne Inet alone, the only other source in the original competition. The Navy further contends that the price increase of the reprourement contract (\$4,372) over Teledyne Inet's original bid was fair and reasonable in view of the rising costs of materials, labor, utilities, etc., over the approximate 11-month period since Teledyne Inet originally bid.

We are persuaded that the Navy's basis for the sole-source award was reasonably founded. The agency's lack of confidence in Introl's assurances of any timely performance was justified by Introl's failure to meet two delivery dates and the uncertainty of assurances concerning corrective action prior to the default. Further, we have held that an award of a reprourement contract to the next qualified offeror on the original solicitation or to only other acceptable offeror on the original solicitation is a recognized method of reprourement, even where, unlike here,

other firms participated thereunder. Rogow & Bernstein, supra; Hemet Valley Flying Service, Inc., 57 Comp. Gen. 703 (1978), 78-2 CPD 117; Diversified Computer Consultants, B-205820, July 13, 1982, 82-2 CPD 47. Finally, we see no legal impediment to the relatively minimal increase of price in the Teledyne Inet reprocurement contract over its original bid. Cf. Fitzgerald Laboratories, Inc., ASBCA, 15205, 15594, 71-2 BCA 9029.

Accordingly, the protest is dismissed in part and denied in part.

*for* *Milton J. Aroslan*  
Comptroller General  
of the United States